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FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER  
1300 I Street, N.W.  
Washington, D.C. 20005-3315

In re Application of  
FERRARI, Veronique  
U.S. Application No.: 09/937,314  
PCT No.: PCT/FR01/00229  
International Filing Date: 24 January 2001  
Priority Date: 24 January 2000  
Attorney's Docket No.: 05725.0932  
For: TRANSFER-RESISTANT COMPOSITION  
STRUCTURED IN RIGID FORM BY A  
POLYMER

DECISION ON PETITION  
UNDER 37 CFR 1.181

This decision is issued in response to the "Petition Under 37 CFR 1.181" filed by applicant on 15 April 2003. No petition fee is required.

**BACKGROUND**

On 24 January 2001, applicant filed international application PCT/FR01/00229, which claimed priority of an earlier application filed 24 January 2000. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 26 July 2001.

A Demand for international preliminary examination electing the United States was not filed prior to the elapse of 19 months from the priority date. Accordingly, the deadline for submission of the basic national fee in the United States expired twenty months after the priority date, i.e., 24 September 2001.

On 24 September 2001, applicant filed a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371" accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 17 January 2002, the DO/EO/US mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497 and the \$130 surcharge for filing the declaration later than twenty months after the priority date were required.

On 15 April, 2003, applicant filed the petition considered herein. The petition seeks to confirm the filing of an executed declaration and surcharge payment on 06 December 2001, and the resubmission of the declaration and surcharge payment on 16 April 2002. The petition includes copies of the previous submissions and the related return postcards.

### **DISCUSSION**

A review of the application file confirms the presence of the materials originally filed by applicant on 06 December 2001 (transmittal letter, executed declaration, and Information Disclosure Statement, with references). The transmittal letter bears a USPTO receipt stamp dated 06 December 2001, confirming the asserted filing date. The included declaration satisfies the requirements of 37 CFR 1.497. It appears that the \$130 check included with the 06 December 2001 submission was mistakenly applied towards the international application number PCT/FR01/00229.

The application file also contains the materials filed by applicant on 16 April 2002 (Response To Notification Of Missing Requirements, with copies of the materials filed 06 December 2001). These materials bear a USPTO receipt stamp dated 16 April 2002, confirming the asserted filing date. Based on the authorization to charge contained in the 16 April 2002 filing, Deposit Account No. 06-0916 was charged the \$130 surcharge.

It is noted that the application file also contains the Preliminary Amendment filed by applicants on 14 March 2002.

Applicant's 06 December 2001 filing of a declaration in compliance with 37 CFR 1.497 and the \$130 surcharge for filing the declaration later than twenty months after the priority date is confirmed. Based on this submission, the Notification Of Missing Requirements mailed 17 January 2002, based as it was on the purported failure of applicant to file a declaration and surcharge, is appropriately vacated.

Based on the above, applicant's petition is moot.

### **CONCLUSION**

The petition under 37 CFR 1.181 is **MOOT**.

The Notification Of Missing Requirements mailed 17 January 2002 is hereby **VACATED**.

The declaration filed 06 December 2001 is accepted in compliance with 37 CFR 1.497.

Deposit Account No 06-0916 will be credited with a \$130 refund based on the duplicative charges made for the \$130 surcharge.

This application, is being forwarded to the National Stage Processing Division for further processing in accord with this decision. The 35 U.S.C. 371 date is 06 December 2001.

A handwritten signature in black ink, appearing to read 'RMR', is positioned above the typed name.

Richard M. Ross  
PCT Petitions Attorney  
PCT Legal Office  
Telephone: (703) 308-6155  
Facsimile: (703) 308-6459